

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed January 8, 2008. Claims 1-18 and 20-45 are pending and were rejected in view of cited art.¹ Claims 1, 9, 15, 22-23, 28, 32, 38, 41, and 43-44 are amended. Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected claims 43-45 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended claims 43 and 44 to more clearly identify the "at least one other receptacle" and as such respectfully request withdrawal of the rejection.

C. PRIOR ART REJECTIONS

Rejection Under 35 U.S.C. §102(b and e)

The Office Action rejected claims 1-18, and 20-37 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,036,699 (*Andreas*). The Office Action also rejected claims 38, 40, and 43-45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,374,275

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

(*Bradley*), and claims 38, 39, 41, and 42 as being anticipated by U.S. Patent No. 5,368,601 (*Sauer*). Because *Andreas*, *Bradley*, and *Sauer* do not teach or suggest each and every element of the rejected claims, Applicants respectfully traverse this rejection in view of the following remarks.

Andreas discloses medical devices and methods for suturing tissue (Abstract). The Office Action identified the embodiment in Figures 1-2B and 4-8 as including a foot (identified in the Office Action as "a tubular element (unlabeled) attached to element 406 and internal to element 426 . . . or 404 with respect to claims 2 and 6) and a foot receptacle (identified as "426 or a tubular element (unlabeled) attached to element 406 and internal to element 426")(See Office Action, Page 3). The device of *Andreas* includes a guide body 402 and a needle shaft 404. The guide body 402 includes a guide tip 406 at its distal end to which is attached "[a] flexible needle sheath 426" (Col. 9, ll. 54-56 and col. 10, line 15). The needle shaft 404 extends from the proximal end of the device through the guide tip 406 and into the needle sheath 426, while the needle sheath 426 extends from the guide tip 406 (See Figures 1-2B).

Independent claim 1 recites, in part, "a shaft having a proximal end portion, a distal end portion, and a foot receptacle disposed at the distal end portion; a foot disposed within the foot receptacle on the distal end portion of the shaft . . . the foot being movable from within the foot receptacle to a deployed position with the foot extending laterally across the distal end portion of the shaft and from the shaft; and a flexible guidebody coupled to and extending distally from the distal end portion of the shaft beyond the foot receptacle" (emphasis added). Applicant respectfully submits that the configuration of the foot and the foot receptacle in combination with the shaft and flexible guidebody as recited in claim 1 are neither taught nor suggested by *Andreas*. The identified "foot" is not disposed within a foot receptacle and is not "movable from within the foot receptacle to a deployed position with the foot extending laterally across the distal end portion of the shaft and from the shaft" as claimed in independent claim 1.

Similar amendments have been made to independent claims 9, 15, 23, 28, and 32. In addition, independent claims 9 and 15 have been amended to recite, in part, "a foot receptacle disposed at the distal end portion, at least a portion of the foot receptacle passing through the shaft", while independent claims 23, 28, and 32 have been amended to recite, in part, "at least a

portion of the foot receptacle extending through the shaft", which is neither taught nor suggested by element 426 or the unlabeled tubular element identified in the Office Action. Applicant, therefore, respectfully requests withdrawal of the rejection of claims 1-18 and 20-37, under Section 102.

As mentioned above, independent claims 38 and 43 were rejected in view of *Bradley*, while independent claims 38 and 41 were rejected in view of *Sauer*. The Office Action identified "a flexible guidebody ('suture thread') extending from the distal end portion of the shaft" (*Bradley*) and "a flexible guidebody (94) extending from the distal end portion of the shaft" (*Sauer*)(Office Action, Page 5). Both flexible guidebodies appear to be sutures. To clarify the "flexible guidebody" of independent claims 38, 41, and 43, these independent claims have been amended to recite, in part, "a flexible guidebody extending from said distal end portion of said shaft, the flexible guidebody configured to receive a guidewire usable to position the device." Such a flexible guidebody is neither taught nor suggested by *Bradley* nor *Sauer*. Applicants, therefore, respectfully request withdrawal of the rejection of claims 38-45, under Section 102.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney

Dated this 9th day of June 2008.

Respectfully submitted,

/Fraser D. Roy, Reg.# 45666/

FRASER D. ROY
Registration No. 45,666
Attorney for Applicant
Customer No. 057360
Telephone No. 801.533.9800

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